
THE IRREGULAR APPOINTMENT OF AZANDE CONSULTING CC

I, the undersigned,

DOMINIQUE MSIBI

do hereby make oath and say that:

- A. I am an adult female Portfolio Manager in the employ of the Applicant and am duly authorized to depose to this application on behalf of the Organisation Undoing Tax Abuse.
- B. The facts herein contained are, save where otherwise stated or where it so appears from the context, within my personal knowledge and are to the best of my knowledge and belief both true and correct. Where I make legal submissions, I do so on the basis of legal advice.
- C. The Organisation Undoing Tax Abuse (“OUTA”) is a non-profit company incorporated under the Companies Act 2008 with registration number 2012/064213/08, with its head office is situated at 318 Oak Avenue, Randburg and with its main objectives being:
 - C.1 the advancement of the Constitution of the Republic of South Africa (“the Constitution”);
 - C.2 holding government accountable;
 - C.3 promotion of a prosperous country free from the abuse of authority and governed with the efficient use of tax revenue;
 - C.4 to be a trusted vehicle for positive change, promoting and advancing the Constitution and other democratic processes by:

- C.5 challenging the taxation and the regulatory environment (as a whole or part), as and when deemed as being irrational, unfit or ineffective for their intended purpose, and
- C.6 questioning and challenging the squandering, maladministration and corrupt use of taxes, using our clear and effective methodology, and then to hold those responsible for the maladministration and/or corruption, to account for their behavior and actions.
- D. In my capacity as Portfolio Manager, I have in my possession and under my control records, accounts and other documents relevant to the subject matter.
- E. By virtue of the foregoing, the facts and allegations deposed to by me fall within my personal knowledge and are to the best of my belief both true and correct.

MANDATE & INTRODUCTION

1. OUTA is a proudly South African non-profit civil action organisation, supported and publicly funded by people who are passionate about improving the prosperity of our nation. OUTA was established to reintroduce accountability to government and to challenge the abuse of authority with regards to taxpayers' money in South Africa.
2. OUTA has received evidence from whistleblowers which indicates maladministration on the part of the South African Social Security Agency ("SASSA").
3. The aforementioned maladministration consists of gross irregularities in regard to the following tenders:
 - 3.1. SASSA: 42/15/GA - Mikondzo Event Management Services (Mikondzo) to be performed through outreach programmes for a period of three (3) years in nine (9) provinces.

- 3.2. SASSA: 40/15/BT - Action Research Project to be performed as part of the integrated community outreach programme (ICROP) of SASSA in targeted areas for a period of three (3) years in nine (9) provinces.
4. Further, we allege that the former Minister of Social Development, Bathabile Dlamini, violated paragraph 2.3(a) of the Executive Ethics Code by deliberately or inadvertently having made a misleading statement to the National Assembly when she replied to a series of Parliamentary Questions.
5. The aforementioned Parliamentary Questions concerned the above-mentioned Mikondzo tender.
6. Consequently, by violating paragraph 2.3(a) of the Executive Ethics Code, the Minister acted in a manner inconsistent with her position and has thus violated paragraph 2.3(b) of the Executive Ethics Code.

A. **THE FACTS**

BACKGROUND

7. **THE MIKONDZO TENDER**

- 7.1. SASSA formally invited proposals from potential service providers to be “accredited” for the provision of Project Mikondzo Event Management Services to be performed through outreach programs for a period of three years in the nine provinces, under tender SASSA: 42/15/GA. The closing date was the 25th of February 2016.
- 7.2. According to the Terms of Reference published for an Expression of Interest in the aforementioned tender, the service provider would have to provide the following services:
 - 7.2.1. Recruit, train, manage Youth Workers;

- 7.2.2. Conduct household profiles;
 - 7.2.3. Capture, consolidate and provide an analysed household profiles report;
 - 7.2.4. Provide the logistics of the community mapping and household profiling;
 - 7.2.5. Assist with the community mobilisation programming;
 - 7.2.6. Provide the logistics at the community dialogues;
 - 7.2.7. Provide the logistics at the Ministerial Outreach Event.
- 7.3. The Invitation to Bid and the Terms of Reference are annexed hereto as **ANNEXURE A**.
- 7.4. On or about 23 June 2016, Ms Raphaahle Ramokgopa, the Acting Chief Executive Officer at the time, sent a Letter of Accreditation to Azande confirming that it had been listed on SASSA's database for a period of 3 years for rendering of event management services as and when required. The Letter of Accreditation is annexed hereto as **ANNEXURE B**.
- 7.5. On or about 4 July 2016, SASSA awarded the Mikondzo tender to Azande Consulting CC and Vee-el Promotions (Pty) (Ltd). The tender award is annexed hereto as **ANNEXURE C**.
- 7.6. On or about 9 October 2017, the Minister of Social Development, Bathabile Dlamini ("the Minister") published her written responses to questions 2018 and 2019 of internal question paper 124.
- 7.6.1. In regard to question 2018, she stated:

“The accreditation was awarded to Azande Consulting and Vee EI Promotions on 23 June 2016. In total SASSA has paid R80.7 million for Mikondzo Project since the accreditation to date i.e. R52.4 million for Azande consulting and R28.3 million for Vee EI Promotions.”

7.6.2. In regard to question 2019, she stated:

“(a) The number of Mikondzo events held in 2016-2017 financial year is 31 Mikondzo events.

(b) The events date started in April 2016 – March 2017 financial year.

(c)(i) in all nine regions of the Agency (Provinces)

(ii) Municipality names are attached.

(iii) The events took place in the indicated municipal wards

(d) The average cost of each event was R2 500 000.00”

- 7.7. A Payment Sheet annexed to the Minister’s answers in regard to Mikondzo events for the 2016-2017 financial year, confirmed that the budgeted amount for each event was R2.5 million and that the total budget for the year was 62.5 million. This was clarified in parliamentary reply to question 3264 by Ms E R Wilson (DA) on 13 November 2017 where the document attached reflected the figures as R10 billion, instead of the amount of R100 million.
- 7.8. The aforementioned Parliamentary Question and Answers are annexed hereto as **ANNEXURE D**.
- 7.9. On or about 11 August 2017, the Minister published a written response to question 1853 of internal question paper no: 22, which was posed by Ms E R Wilson of the Democratic Alliance. She stated that:

“(1) Tender SASSA 42/15/GA was a request for proposals from potential service providers to be accredited for the provision of Project Mikondzo event management services. This was not a tender for the appointment of service providers, but only for the accreditation of service providers, who would be registered on the SASSA data base. When the specific service are required, quotations are obtained from the accredited service providers, in accordance with approved procurement processes. The tender was advertised in the Government Tender Bulletin on 5 February 2016 and responses were evaluated by an approved Bid Evaluation Committee during May 2016. The responses were evaluated on administrative and technical criteria only.

(a) Since this was a process to accredit service providers and not to award a contract, there is no total value available;

(b) Given the above response, this is not applicable;

(c) The accreditation is for a period of 3 years as from July 2016.

(2) There is no signed service level agreement as there is no contract entered into. However, the services required are stipulated in the Terms of Reference which were advertised.”

- 7.10. The aforementioned Parliamentary Question and Answer is annexed hereto as **ANNEXURE E**.
- 7.11. The statement by the Minister that SASSA tendered not for the provision of services but for accreditation of service providers who would be registered on the SASSA data base contradicts her previous answer in which she stated that *“SASSA has paid R80.7 million for Mikondzo Project since the accreditation to date.”*
- 7.12. As this sum was paid to Azande and Vee EI, the companies accredited under tender SASSA: 42/15/GA, it seems that the tender was in fact for the provision of services or that they were paid the sum without a tender or contract.

- 7.13. The purpose of accrediting these companies is rendered moot due to the existence of the Central Supplier Database (“CSD”). In terms of National Treasury Instruction Note 4A of 2016/2017, the use of the CSD is mandatory for all Schedule 2 and 3 public entities. The aforementioned Instruction Note is annexed hereto as **ANNEXURE E.1**.
- 7.14. The CSD maintains a database of organisations, institutions and individuals who can provide goods and services to government and has served as the key supplier organisation for organs of state since 1 April 2016, providing consolidated, accurate, up-to-date, complete and verified supplier information. Prospective suppliers self-register on the CSD and the act of self-registration represents an expression of interest from the supplier to conduct business with the South African government.
- 7.15. One must ask whether or not the appointment of Azande was based on the Mikondzo Project. If it was, there was no reason for SASSA to advertise for companies to populate an unnecessary database and if it wasn't, then there was no reason to tender at all.

8. **THE ICROP TENDER**

9. **THE EVALUATION AND AWARD**

10. SASSA formally invited proposals from service providers for the provision of the Action Research Project through door to door services to be performed as part of the Integrated Community Outreach Programme (ICROP) in targeted areas for a period of 3 years in 9 provinces of the Republic of South Africa.

11. On or about 10 February 2016, a compulsory briefing session was to be held in regard to the aforementioned invitation and the closing date for submissions was set for 11:00am on 23 February 2016.

12. According to the scope and extent of the work included in the Terms of Reference, the service provider is required to:
 - 12.1. conduct door-to-door surveys and household profiling within the identified wards;
 - 12.2. consolidate the findings and develop a comprehensive report for SASSA;
 - 12.3. coordinate small scale ICROP services as and when required to do so;
 - 12.4. develop and implement a project plan to conduct assessment, with a minimum of 70% of households within certain municipal wards;
 - 12.5. identify the project manager who must have the minimum experience of 3 to 5 years in a work of a similar nature and should be supported by three contactable lists of references;
 - 12.6. ensure that the Human Resources and/or assessors who will be appointed reside in the respective targeted municipal ward to enable access to job opportunities for the purposes of local economic development;
 - 12.7. ensure that there is a dedicated Principal Project Manager and an on-site Project Coordinator during implementation at any Door-to-Door program. The contact details, including physical and postal addresses of these persons must be confirmed.
 - 12.8. recruit, train, manage and remunerate Youth Workers to administer the surveys;

- 12.9. capture, consolidate and provide an analysed survey and household profiling report.
13. The Invitation to Bid and the Terms of Reference are annexed hereto as **ANNEXURE F**.
14. On or about 22 February 2016, Azande submitted a Declaration of Interest, Preference Points Claim Form in Terms of the Preferential Procurement Regulations 2011, a Declaration of Bidder's Past Supply Chain Management Practices and Certificate of Independent Bid Determination to SASSA. In the first document, the Director of Azande, Ms Maqu Makhaye, denied any connection to the bidder and declared no interests in regard to the bid. In the second, she described the principal business activity of Azande as "*event management and exhibition.*" The documents are annexed hereto as a bundle marked **ANNEXURE G**
15. The fact that Azande is primarily an event's management company is confirmed by its many Central Supplier Database Reports, in which Azande lists its commodities families as:
- 15.1. Audio and visual presentation and composing equipment;
 - 15.2. Clothing;
 - 15.3. Restaurants and Catering.
16. The reports are annexed hereto in a bundle marked **ANNEXURE H**.

EVALUATION CRITERIA	WEIGHT
<p>Values: 1-Poor 2- Average 3-Good 4- Very Good 5- Excellent</p> <ul style="list-style-type: none"> • R 500 001 = 1 Point • R1 000 001 = 2 points • R2 000 001 = 3 points • R3 000 001 = 4 points • R4 000 001 = 5 points 	<hr style="width: 20%; margin: 0 auto;"/> <hr style="width: 20%; margin: 10px auto 0 auto;"/> 10
<p>s Values: 1-Poor 2- Average 3-Good 4- Very Good 5- Excellent</p> <p>Number of Community-based <u>Research/assessment Programmes</u> during the <u>last two years</u></p> <ul style="list-style-type: none"> ▪ 1 programmes= 1 point ▪ 2 programmes= 2 points ▪ 3 Programmes = 3points ▪ 4 programmes = 4 points ▪ 5 programmes and above = 5 points 	
<ul style="list-style-type: none"> • Quality of the methodology <p>Project approach with reference to <u>Implementation Plan</u> regarding:</p> <ul style="list-style-type: none"> ✓ Programme prioritization 	30

EVALUATION CRITERIA	WEIGHT
✓ work activity breakdown	
<ul style="list-style-type: none"> • Skills Transfer Plan ✓ Detailed plan for Youth workers 	20

18. Any bid that scored below 60 points for functionality was disqualified and of the 23 bids evaluated, only Azande scored over 60 points, with a total of 93.5. The next highest score was a mere 56.5. The next stage of the evaluation was the Price and B-BBEE Evaluation, in which Azande was the only company evaluated due to the aforementioned disqualification. Azande scored 90 points for its price of R487 933 295.00 and 10 points for its B-BBEE level of 1, amounting to a total of 100 points.

19. The results of the evaluation are concerning as:

19.1. Azande scored the full fifty allocated points when the Terms of Reference provided a maximum of 5 each;

19.2. Azande scored 93.5 points when the most they could score in the first three criteria was 15;

19.3. If Azande scored 50 points in the last two criteria, it did so despite the fact it did not provide a time frame;

19.4. There is no indication that their capacity to deliver on the project was evaluated and it is unknown what proof Azande submitted that its staff were competent to perform the tendered services;

20. The BEC recommended that the BAC approve the appointment of Azande, but noted that as the price was high SASSA should embark on the negotiation of lowering the bid projected amount without compromising the services required.

21. The recommendation was signed by the following members of the BEC:
 - 21.1. Sonwabo Kolliti (chairperson);
 - 21.2. Bonga Gcumisa;
 - 21.3. Mbulaheni Mulaudzi;
 - 21.4. Benzile Hadebe.

22. The submission is annexed hereto as **ANNEXURE I**.

23. On or about 12 May 2016, the BAC held a meeting in which it recommended the CEO, Mrs Virginia Petersen at the time, approve the appointment of Azande for the ICROP tender. This recommendation was subject to price negotiation by the BEC with Azande before the award and the confirmation of the availability of funds. The recommendation is annexed hereto as **ANNEXURE J**.

24. On or about 30 May 2016, the Chairperson of the BEC made a submission to the Acting CEO, advising her that the Committee had negotiated with Azande for a new bid price proposal of R392 725 988.00 (VAT inclusive), a reduction of R95 207 310.00 from the original price of R487 933 298.00 (VAT inclusive). The BEC thus recommended that Ms Ramokgopa, approve the appointment of Azande as service provider for the ICROP tender.

25. On or about 1 June 2016, the Acting Senior Manager: Demand Management of SASSA sent an email to Azande in which it acknowledged receipt of its response dated 19 February 2016 and stated that it would not be able to consider its proposal without confirming the cost for the 3-year period in the company's letterhead. The email is annexed hereto as **ANNEXURE K.**
26. On or about 6 June 2016, the BAC Secretariat made a submission to the BAC requesting that it note and consider the recommendations of the BEC in the submission of 30 May 2016, above. Both submissions are annexed hereto as **ANNEXURE L.**
27. On 9 June 2016, the BAC held a meeting in which it recommended that the Acting CEO, Ms Ramokgopa, approve the appointment of Azande as service provider for the ICROP tender, following the negotiation of a new bid price of R392 725 988.00 (VAT inclusive). The recommendation was signed by the following members of the BAC:
- 27.1. T Chauke, the Chief Financial Officer and Chairperson of the BAC;
 - 27.2. T Matlou, the Deputy Chairperson;
 - 27.3. D Ndlovu;
 - 27.4. Z Mvulane;
 - 27.5. C Vundule;
 - 27.6. D Dunkerley;
 - 27.7. P Bengu;
 - 27.8. M Nmutshili.

28. The Acting CEO signed the recommendation on the 20th of June 2016. The negotiations are not described in any detail and no documentation other than the reduced price is presented. The recommendation is annexed hereto as **ANNEXURE M.**
29. On or about 17 June 2016, Penelope Mdlankomo sent Zwidofhelangani Mulaudzi the ICROP budget funded from retained surplus. This is concerning as the process for transacting on surplus is that the Supply Chain Management ("SCM") will request that Budget Planning relax budgetary controls in order to allow for overspending. The email and its attachment is annexed hereto as **ANNEXURE N.**
30. On or about 17 June 2016, the BAC Secretariat made a submission to the CEO, recommending that she approve the appointment of Azande as service provider for the ICROP tender. The recommendation was signed by both the Chief Financial Officer ("CFO") and the Acting CEO on 20 June 2016. The CFO, Mr Tsakeriwa Chauke who stated, *inter alia*, that the bid "*will need to be linked to the Mikondzo Project*". This statement by Chauke, and the fact that the awards for both the Mikondzo Project tender and the ICROP tender were published on the same day is extremely concerning. No reference to the Mikondzo Project is made in any of the documents pertaining to the ICROP tender and any such linking cannot be considered fair, just or equitable. The submission is annexed hereto as **ANNEXURE O.**
31. On or about 17 June 2016, the Acting CEO sent a route form to the BAC secretariat, approving the appointment of Azande as service provider for the ICROP tender. The

form was signed by the Acting CEO, the CFO on 20 June 2016 and the Acting Senior Manager: Demand Management, Ms Penelope Mdlankomo, on the 17th of June 2016. A submission compliance checklist, signed by Ms Mdlankomo on the 17th of June 2016, was attached to the route form. Both documents are annexed hereto as **ANNEXURE P.**

32. On or about 20 June 2016, the Acting CEO sent a letter of award to Azande in which she confirmed its appointment as service provider for the ICROP tender at a cost of R392,725,988.00 (VAT inclusive) for a period of 3 years. The Managing Director of Azande, Ms Maqu Makhaye, responded via email 3 days later, accepting the award. The letter of award and the subsequent acceptance are annexed hereto as **ANNEXURE Q.**

33. On or about 4 July 2016, SASSA and Azande signed a Service Level Agreement ("SLA") in regard to the aforementioned ICROP tender. The SLA is annexed hereto as **ANNEXURE R.**

34. On or about 4 July 2016, SASSA awarded the ICROP Tender to Azande. Curiously, the amount stated on the bid award is R487,933,298.00, instead of the renegotiated price of R392,725,988.00. The bid award is annexed hereto as **ANNEXURE S.**

35. On or about 22 July 2016, SASSA and Azande signed a Services Contract confirming the provisions of the SLA and that the total cost of the services including disbursement and travelling costs would not exceed R392,725,988.00 (VAT inclusive). The Service Contract is Annexed hereto as **ANNEXURE T.**

THE FUNDING AND PAYMENT

36. On or about 11 November 2016, Mr Mobe Paul Radebe sent an email to John Skhosana, the Project Manager of the Mikondzo and ICROP projects, confirming that ICROP is funded from retained surplus and that the process for transacting on surplus is that the SCM will request that Budget Planning relax budgetary controls in order to allow for overspending on the ICROP Project.

37. The above-mentioned email is extremely concerning as there is no record of any request from SCM to budget planning. Furthermore, same is not provided for in the Service Agreement.

38. On or about 20 December 2016, the CFO sent an email to various individuals in which he raised certain issues regarding Azande and the ICROP tender after he received a payment batch amounting to R29,281,872.99 for November 2016. He stated:

- “1. If the spending for one month is R29 million this might mean that the branch’s plan is to spend R348 million in one year and how does this relate to the 3 year contract.*
- 2. I have since seen that some of the Annexure B confirmation of ICROP services rendered by Azande are not signed off, in other circumstances there are typed names without signatures. In some cases there are signatures with no names. I do not know whether there are currently delegations to sign off the services*

from the regions. Does the HO have a specimen for the signatures? I do not know how the branch verify the signatures in questions as there are no names linked to this process, may you please assist me in this regard.

- 3. Are the special ICROP has a standard negotiated prices of R1,500,000 which may include value for money assessments, if so may I be favoured with such a document or are the prices the accepted tender prices per event?*
- 4. Does ICROP community events has a negotiated standard prices @ R223,000 if so may I request a copy of such a document.*
- 5. How do one reconcile the GRV with Quantity delivered vs invoice deliverables in terms of Special ICROPs and Community events ICROP (Major events and minor events).*
- 6. 9.2 of the services contract "The service Provider's invoice must be accompanied by an original monthly statement and a comprehensive progress report and a copy of the service provider's duly signed confirmation of the completed or rendered deliverables in accordance with the scope and deliverables as set out herein and the SLA". May the branch confirm in writing the existence and compliance of this clause and indicated how it is complied with.*
- 7. How does one reconcile the specification or request for the service and the confirmed deliverable. I note that the specification and quantities indicated to a service provider differ to the service received confirmation. This is confusing for me. Are the numbers the same across, if not how are they dealt with. E.g. Enhlazeni event how do one reconcile the spec and confirmation. Confirmation not even signed. The Lunenburg ward 7 event has 4000 table cloth for public*

members, what are these? Are they standard gifts and how are they billed in the contract.

8. *I have noted that there are 3 Special Icrops that were included in the invoice which were taken out:*

- *Why were they taken out or why were they included in the first place.*
- *Are the services rendered so they can be accrued in the correct period.”*

39. The aforementioned emails are annexed hereto as **ANNEXURE U**.

40. As detailed above, section 9.2 of the Services Contract states:

“The Service Provider’s invoice must be accompanied by an original monthly statement and a comprehensive progress report and a copy of the Service Provider’s duly signed confirmation of the completed or rendered deliverables in accordance with the scope and deliverables as set out herein and the SLA”.

41. From the evidence detailed below, it will soon become apparent that the CFO’s concerns were not adequately addresses and that the situation only deteriorated further.

42. On or about 6 March, Diane Dunkerley sent an email to John Skhosana in which she asked him to make the arrangements for a stakeholder’s event held at the Cape Sun in the Western Cape for the Minister. Approximately 300 community members were expected and the total costs for the taxis was expected to be approximately R12 000. She further requested that the arrangements be made under their existing contract

so that they could pay the required costs from the budget of ICROP. The number was later amended to 150 persons. From the documents in our possession, it seems that none of the requirements of paragraph 9.2 of the Services Contract were adhered to. The documents are annexed hereto as **ANNEXURE V**.

43. For the purposes of simplicity, we have attached all the Confirmation of ICROP Services Rendered by the Service Provider documents as one large bundle marked as **ANNEXURE W**.
44. The aforementioned document includes several Azande invoices and Confirmation of ICROP Services Rendered by the Service Provider documents. The latter being signed by numerous SASSA officials.
45. The Confirmation of Services Rendered document seem to consist of a single page document which includes the:
 - 45.1. Location of the event;
 - 45.2. date of the event;
 - 45.3. Names and signatures of the Local Manager and Grants Administrator for the event;
 - 45.4. List of services or goods provided, including the cost of said services.
46. From the outset, it is clear that none of the requirements of paragraph 9.2 of the Services Contract have been adhered to and that SASSA has failed to provide sufficient proof that Azande has rendered the services it was contracted to perform. Many of the Confirmation of Services Rendered documents are flawed as they:

- 46.1. Lack dates for the event;
 - 46.2. Fail to describe the services provided and the costs of said service;
 - 46.3. Entail the provision of services which has little to do with those described in the Terms of Reference.
 - 46.4. Are not signed off, are typed names without signatures or are signatures with no names.
47. According to the Supplier Payment History Report of 30 August 2017 in regard to Azande, the company was paid a total of R7,027,766.10 for the 2013 period.
48. Furthermore, the report reveals that the total cost for the period September 2013 to 17 July 2016 amounted to R12,447,044.64. We possess no documents which justify the payments of these amounts.
49. Finally, the report indicates that the total cost amounted to R221,671,116.97 respectively, from the period 1 July 2016 to 4 August 2017. The Report makes no distinction between them the Mikondzo and ICROP tenders, we only know that the sum was paid.
50. The figures of the Supplier Annual History Report seem to contradict the figures of annexed to the Minister answers detailed in paragraph 8.8 above. Furthermore, they indicate that SASSA had previously tendered with Azande and there was thus no need for an accreditation process.

51. The Supplier Payment History Report and OUTA's own evaluation of it are annexed hereto as **ANNEXURE X** and **Y** respectively.

OUTA'S REPORT ON THE IRREGULAR APPOINTMENT OF AZANDE

52. On 15 September 2017, OUTA submitted a report detailing the irregular appointment of Azande to SASSA, the National Treasury, the Directorate of Priority Crime Investigation and the Parliamentary Committee on Social Development.
53. On 3 October 2017, the Acting CEO of SASSA, Pearl Bengu, responded to our report stating, *inter alia*, that she had already been made aware of the alleged improprieties of the two tenders and had initiated an investigation.
54. Unfortunately, we received no feedback from SASSA or any of the other entities since then. However, on or about 18 January 2018, SASSA presented a PowerPoint presentation detailing their plans to implement the ICROP tender during the course of 2018.
55. The aforementioned response by the Acting CEO and the PowerPoint Presentation are annexed hereto as **ANNEXURE Z**.

B. LEGAL AND REGULATORY FRAMEWORK

The Constitution of the Republic of South Africa ("the Constitution")

56. In terms of section 217(1):

“(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. be implemented.”

THE PUBLIC FINANCE MANAGEMENT ACT, 1999 (“PFMA”)

57. In terms of section 50:

“(1) The accounting authority for a public entity must-

(a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;

(b) act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;

...

(d) seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the state.

(2) A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not-

(a) act in a way that is inconsistent with the responsibilities assigned to an accounting authority in terms of this Act; or

- (b) *use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.*

58. In terms of section 51:

“(1) An accounting authority for a public entity-

(a) must ensure that that public entity has and maintains-

- (i) effective, efficient and transparent systems of financial and risk management and internal control;*
- (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and*
- (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;*
- (iv) a system for properly evaluating all major capital projects prior to a final decision on the project.*

(b) must take effective and appropriate steps to-

- (i) collect all revenue due to the public entity concerned; and*
- (ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and*
- (iii) manage available working capital efficiently and economically;*
- (c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;”*

59. In terms of section 57:

“An official in a public entity-

- (a) must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*
- (b) is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*
- (c) must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- (d) must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and*
- (e) is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.”*

60. **NATIONAL TREASURY REGULATIONS**

61. In terms of Regulation 16A:

“16A.3 Supply chain management system

16A3.1 The accounting officer or accounting authority of an institution to which these Regulations apply must develop and implement an effective and efficient supply chain management system in his or her institution for-

- (a) the acquisition of goods and services; and*

...

16A3.2 A supply chain management system referred to in paragraph 16A.3.1 must-

- (a) be fair, equitable, transparent, competitive and cost effective;*

...

16A.8 Compliance with ethical standards

16A8.1 All officials and other role-players in a supply chain management system must comply with the highest ethical standards in order to promote-

- (a) mutual trust and respect; and*
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.*

16A8.2 The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role-players involved in supply chain management.

16A8.3 A supply chain management official or other role-player-

...

- (b) must treat all suppliers and potential suppliers equitably;*
- (c) may not use their position for private gain or to improperly benefit another person;*

...

- (e) must be scrupulous in their use of public property; and*
- (f) must assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system.*

16A.9 Avoiding abuse of supply chain management system

16A9.1 The accounting officer or accounting authority must-

- (a) take all reasonable steps to prevent abuse of the supply chain management system;*

...

- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, nor any of its directors, are listed as companies or persons prohibited from doing business with the public sector;"*

62. **EXECUTIVE ETHICS CODE ("the Code")**

63. In terms of paragraph 2.3(a) of the Code, Members of the Executive may not *"deliberately or inadvertently mislead the President, or the Premier or, as the case may be; the Legislature."*

64. In terms of paragraph 2.3(b) of the Code, Members of the Executive may not act in a manner inconsistent with their position.

C. **CONCLUSION**

65. In regard to the Mikondzo tender, we allege that SASSA is guilty of maladministration as it acted contrary to section 217 of the Constitution, sections 50 and 51 of the PFMA and Regulation 16A of the National Treasury Regulations by:

65.1. Breaching the provisions of National Treasury Instruction Note 4A of 2016/2017 by advertising for service providers to be *"accredited"* and by-passing the procurement process and failing to utilise the CSD when it appointed Azande;¹

65.2. Failing to halt the payments to Azande after the irregularities were brought to their attention, resulting in financial prejudice to the state.²

66. Further, in regard to the Mikondzo tender, we allege that the former Minister of Social Development, Bathabile Dlamini:

¹ Ad paragraphs 7.4 & 7.5 at page 4, & ad paragraph 7.9 at page 5.

² Ad paragraphs 7.6, 7.7 & 7.11 at pages 4-6.

- 66.1. Violated paragraph 2.3(a) of the Executive Ethics Code by deliberately or inadvertently making a misleading statement to the National Assembly when she replied to a series of Parliamentary Questions.³
- 66.2. Consequently, by violating paragraph 2.3(a) of the Executive Ethics Code, the Minister acted in a manner inconsistent with her position and has thus violated paragraph 2.3(b) of the Executive Ethics Code.
67. In regard to the ICROP tender, we allege that the members of the BEC⁴ are guilty of maladministration as they acted contrary to section 217 of the Constitution, sections 50 and 51 of the PFMA and Regulation 16A of the National Treasury Regulations by:
- 67.1. Intentionally or negligently falling to evaluate Azande's bid in a manner that was fair, equitable, transparent, competitive and cost-effective.⁵
- 67.2. Subsequently, recommending that the BAC approve the appointment of Azande.⁶
68. Further, we allege that the members of the BAC⁷ are guilty of maladministration as they acted contrary to section 217 of the Constitution, sections 50 and 51 of the PFMA and Regulation 16A of the National Treasury Regulations by:
- 68.1. Recommending that the Acting CEO approve the appointment of Azande, despite the irregularities in the BEC's evaluation;⁸

³ Ad paragraphs 7.6 & 7.9 at pages 4-5.

⁴ Ad paragraph 21 at page 13.

⁵ Ad paragraphs 17, 18 & 19 at pages 10-12.

⁶ Ad paragraphs 20 & 24 at pages 13.

⁷ Ad paragraph 27 at page 14.

⁸ Ad paragraphs 23 & 27 at pages 13-14.

69. Further, we allege that the CFO is guilty of maladministration as he acted contrary to section 217 of the Constitution, sections 50 and 51 of the PFMA and Regulation 16A of the National Treasury Regulations by:
- 69.1. Recommending that the CEO approve the appointment of Azande in his capacity as chairperson of the BAC;⁹
- 69.2. Suggesting that the Azande's ICROP bid would have to be linked to the Mikondzo tender, prior to the award of either tender.¹⁰
70. Further, we allege that the Acting CEO, Raphaahle Ramokgopa is guilty of maladministration as she acted contrary to section 217 of the Constitution, sections 50 and 51 of the PFMA and Regulation 16A of the National Treasury Regulations by:
- 70.1. Approving the appointment of Azande in spite of the aforementioned irregularities;¹¹
- 70.2. Failing to intervene and halt the payments to Azande, when she knew or ought to have known that the tender was irregular.¹²
71. Further, we allege the Board of SASSA, including Acting CEO Pearl Bengu, as the accounting authority of the Agency, is guilty of maladministration as they acted contrary to sections 50 and 51 of the PFMA by:

⁹ Ad paragraphs 27, 30 & 31 at pages 14-15.

¹⁰ Ad paragraph 30 at page 15.

¹¹ Ad paragraphs 28, 30, 31 & 32 at pages 15-16.

¹² Ad paragraph 30 at page 15.

- 71.1. Failing to act exercise their oversight responsibilities and halt the appointment of Azande in regard to both the Mikondzo and ICROP tender.¹³
- 71.2. Failing to halt the payments to Azande, after the irregularities were brought to their attention.¹⁴
72. Further, we allege that John Skhosana, project manager of the ICROP project acted contrary to section 57 of the PFMA and Regulation 16A.8 by:
- 72.1. Failing to intervene once he was made aware of the fact that ICROP was funded from retained surplus.¹⁵
73. Finally, we allege that John Skhosana, and the numerous official who signed off on the Confirmation of ICROP Services Rendered by the Service Provider documents acted contrary to section 57 of the PFMA and Regulation 16A.8 by:
- 73.1. Consistently failing to comply with paragraph 9.2 of the Services Contract;¹⁶
- 73.2. Signing off on the aforementioned documents without adequate proof of service by Azande;¹⁷

¹³ Ad paragraphs 7.5 at page 4 & ad paragraph 32 at page 16.

¹⁴ Ad paragraphs 52 – 54 at pages 22.

¹⁵ Ad paragraphs 36 & 37 at pages 17.

¹⁶ Ad paragraphs 38 at page 17 & ad paragraphs 42, 43 & 46 at pages 19-20.

¹⁷ Ad paragraphs 38 at page 17 & ad paragraph 46 at page 20.

74. With the above in mind we request that the Public Protector exercise her powers in terms of section 182(1) of the Constitution and:

74.1. Investigate the above-mentioned allegations;

74.2. Report on such conduct; and

74.3. Suggest appropriate remedial action.

SIGNED AT RANDBURG ON THIS th DAY OF JUNE 2018.



DEPONENT

I CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT SHE/HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT WHICH WAS SIGNED AND SWORN TO BEFORE ME AT RANDBURG ON THIS 1st TH DAY OF JUNE 2018, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO. R1258 OF 21 July 1972, AS AMENDED, AND GOVERNMENT NOTICE NO. R1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH.



COMMISSIONER OF OATHS
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POSITION HELD:
BUSINESS ADDRESS:

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